

**SWANZEY ZONING BOARD OF ADJUSTMENT MEETING
JUNE 21, 2010**

Minutes are not final until reviewed and approved by the Board. Review and approval of minutes generally takes place at the next regularly scheduled meeting of the Board.

ATTENDANCE

William Hutwelker, Chair; Keith Thibault, Vice Chair; Bob Mitchell, Jerry Walker, Charles Beauregard, Sr. (arrived at 7:45). Alternates Bryan Rudgers, Charles Beauregard, Jr. (arrived at 7:50). Town Planner Carbonneau also was present.

Chairman Hutwelker called the meeting to order at 7:05 p.m. The Board addressed the following items.

MINUTES

Motion by Thibault to approve the minutes of the April 19, 2010 meeting. Second by Walker. Hutwelker, Thibault, Walker in favor; Rudgers and Mitchell abstaining. Motion approved.

Motion by Mitchell to approve the minutes of the May 17, 2010 meeting. Second by Walker. Hutwelker, Mitchell, Walker and Rudgers in favor; Thibault abstaining. Motion approved.

1. (Public Hearing) Special Exception

Applicant: Mohammed W. Ali

Property owner: Mohammed W. Ali & Alyia Din

Property location: 115/117 Monadnock Highway Tax Map 18, Lot 87

Zoning District(s): Business District

Request: Special exception from Section V.B.2.e. to permit a portion of the existing structure to be utilized as a one-family dwelling.

Members seated: Hutwelker, Thibault, Mitchell, Walker. Rudgers was seated for Beauregard, Sr.

Representing the application: Mohammed W. Ali

Abutters present: Tom Hastings

Hutwelker called the public hearing to order at 7:08.

DISCUSSION

Members received a June 17, 2010 application summary from Town Planner Carbonneau. Reviewing the summary, Carbonneau stated that the building contains a convenience store with associated gas pumps, and a retail establishment. The parcel is connected to public water (North Swanze Water & Fire Precinct) and public sewer. Carbonneau noted that according to the

assessment card, the area proposed for conversion to housing contains approximately 1,424 square feet. (However, the floor plan submitted by Ali this evening shows the unit as containing 1,254 s.f.) Carbonneau advised those present that the second owner of the property, Alyia Din, had not received timely notice of the public hearing. Town counsel advised the Board to conduct the public hearing, but keep it open until a date and time certain until Din indicates receipt of the notice.

Representing the application, Ali stated that Din (his silent partner) is in full accord with the proposal. Ali stated that his attempts to rent the space have been unsuccessful. Ali and his family would occupy the dwelling. Ali said that he would be willing to accept a condition of approval requiring that the dwelling be owner-occupied.

Ali stated that all information has been supplied in the application packet. Changes to the existing single-family dwelling are to be minimal, Ali stated: An attached garage will be converted into a bedroom; a front entrance and two rear entrances serve the dwelling. Ali said that the building has a basement, but the space is not used for storage for any of the existing businesses. Carbonneau said that Ali has submitted a building permit application, and Code Enforcement Officer Weston anticipates no problems converting the retail space to a single-family dwelling.

Space for parking on the lot is ample, Ali said; parking to serve the dwelling is located at the rear of the structure, separate from parking associated with retail uses. Hutwelker asked where the family's six children would safely play, given traffic and deliveries that take place on the lot. Ali said that all traffic is more than 200 yards away from the rear of the dwelling.

Abutter Hastings asked whether an owner-occupied dwelling in the Business District would set a precedent, and whether he would get the same consideration to develop his property, the former Dexter Shoe store. Hutwelker said that all property owners receive the same consideration, so long as the Ordinance remains the same. Thibault said that special exceptions allowing residences in the Business District are allowed, and are granted, perhaps more often than the Board would like to see.

Hutwelker polled Board members for their interest in accepting Ali's invitation to tour the site. Members expressed interest. Hutwelker asked that Weston be present.

Motion at 7:35 by Rudgers to continue the public hearing to a 6:00 p.m. site visit at 115/117 Monadnock Highway on July 19, 2010, to be followed by consideration of the proposal as the first item on the July 19, 2010 ZBA agenda. Second by Mitchell. All in favor.

2. (Public Hearing) Variances

Applicant: Mary & Lynn Griffin-Bales

Property owner: Mary & Lynn Griffin-Bales

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Property location: 31 West Shore Rd Tax Map 61, Lot 52

Zoning District(s): Rural/Agricultural & Shoreland Protection Districts

Request: Variances from Sections XI.B.1. and X.I.C. to permit the construction of a one-family dwelling to replace the existing structure. The new structure will increase cubic volume and modify the footprint from the existing structure.

Members seated: Hutwelker, Thibault, Mitchell, Walker. Rudgers was seated for Beauregard, Sr.

Representing the application: Wayne Skinner, Tom Forest

Abutters present: Barry Dwyer

Hutwelker called the public hearing to order at 7:38.

DISCUSSION

Members received a June 17, 2010 application summary from Town Planner Carbonneau. Reviewing the summary with the Board, Carbonneau stated that the lot is served by private water and septic. The septic system consists of a holding tank (sized for 2 bedrooms/300 gpd). Carbonneau stated that septic approval (granted on November 29, 1990) was subject to the condition that “no expansion or conversion will be allowed.” Carbonneau stated that a Shoreland Impact Permit (2010-00874) was issued on May 7, 2010, indicating State approval of the tear-down and rebuild. Department heads have provided no feedback regarding the application.

Skinner presented the application, stating that the existing structure is an old camp, now fire-damaged, with numerous dilapidated decks and sheds. The owners’ fire insurance calls for repairing the building in kind. Skinner said that his plan combines the uses of the various outbuildings and decks into one cohesive unit that complies with Town side setbacks. However, due to the shallow depth of the lot, the owners request a variance of the setback from Swanzey Lake. Skinner said that the Shoreland Impact Permits grants State approval for 50’ setback. The dwelling will remain a 2-bedroom residence, and the owners intend to retire there.

Forest discussed the septic system, stating that it would be possible to locate a Clean Solution system (the owners’ preference) 125’ from Swanzey Lake; however, that location would impinge on a wetland. Forest said that he likely will return with a request for a variance for the leach field. He said that test pits show the soil to be excellent.

Forest said that a holding tank currently serves the site. In his interpretation, Forest said, the holding tank is legal for two bedrooms.

Forest presented a site plan of existing conditions, showing the basis for calculation of impervious surface. He stated that, while the total square footage of heated structures will be slightly greater than what presently exists, the impervious surface of the new building and associated decks (3,884 square feet) is slightly less than what presently exists (3,989 square feet).

Skinner stated that the approximately 2,500 square feet of enclosed space includes the 250 sf porch. Skinner said that heating is not intended for a 15’ x

20' finished and insulated storage room. Along with a bedroom on the upstairs level, Skinner said, also proposed are a sound studio/music room and a large sitting area. Under one section of the structure is a full basement for mechanicals; a crawl space is under another portion.

Board members ascertained from Carbonneau that there is no evidence in Town records of building permits for structures on the parcel. Carbonneau stated that dates of construction are unknown. In response to other questions, Carbonneau stated that, in the past, the ZBA has differentiated between decks and other structures when calculating square footage of impervious surface. However, Carbonneau said, total impervious surface must be considered as part of any application for construction in the Shorelands Protection District. Board members discussed the definition of "structure." Skinner stated that he included decks in the calculations of coverage he submitted to the state.

Beauregard, Jr. encouraged installation of sound insulation for the proposed music room to prevent noise from leaving the building. Skinner said that the room would be sound-deadened.

Skinner stated that the applicants would agree to a condition denying any further building on the lot – including but not limited to any additional structures, decks, or a garage.

Abutter Dwyer spoke in support of the variances, stating that he could see no downside to the proposal. He said that the new building would replace a fire hazard, expose more soil to absorb run-off, and would not negatively affect his view.

Hearing no further comments or questions, Hutwelker closed the public hearing at 8:25. Board members agreed that the proposal presents an improvement over existing conditions. Thibault said that denial would pose a hardship on property owners who are trying to correct deteriorated conditions on a challenging lot with a unique configuration. Relative to intensity of usage -- the key criterion that informs his perspective when considering applications for properties located on Swanzey Lake -- Mitchell said that the proposal is a wash. Board members agreed to consider both variance requests simultaneously.

Board members reviewed the criteria for granting the requested variances.

1. Could the variance be granted without the proposed use being contrary to the public interest?

Members agreed in the affirmative.

2. Would the spirit of the ordinance be observed if the variance is granted?

Members agreed in the affirmative, stating that the proposal is more compliant than existing conditions, consolidates uses, and moves the structure away from Swanzey Lake.

3. Would granting the variance do substantial justice?

Members agreed in the affirmative, agreeing that the proposal seeks to cure a hazard and an eyesore.

4. Could the variance be granted without diminishing surrounding property values?

Members agreed in the affirmative, noting that all testimony indicates that property values would, in fact, be improved.

5. Do special conditions of the property distinguish it from other properties in the area?

Members agreed that the steep slopes, along with the shape of the lot, all are distinguishing.

a.i. Owing to the property's distinguishing special conditions, is there a fair a substantial relationship between the general purposes of the ordinance and the specific application of that provision to the property?

Members agreed in the affirmative, because the proposal maintains an equal or smaller footprint.

a.ii. Is the proposed use is a reasonable one?

Members agreed in the affirmative.

b. Owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the property.

Since the criteria established in 5.a. and 5.a.ii were met, this criterion did not need to be addressed.

Motion by Thibault to approve the variances from Sections XI.B.1. and XI.C. to permit the construction of a one-family dwelling and associated decks as shown in the plan presented, with the condition that there shall be no construction of any additional structures not shown on the plan presented (including but not limited to decks, sheds, garages, walkways and patios). Second by Mitchell. All in favor.

3. (Public Hearing) Appeal from Administrative Decision

Applicant: Homestead Woolen Mills, Inc.

Property owner:

Property location: 5, 7 & 9 South Winchester St Tax Map 72, Lot 31

Zoning District(s): Village Districts

Request: Appeal of zoning determination rendered on May 24, 2010 by the town planner (responding to a multi-tenant application filed on May 18, 2010) that indoor auctions are not a permitted use in the Village Business District.

Members seated: Hutwelker, Thibault, Mitchell, Beauregard, Sr., Walker.

Representing the application: Bruce Treat, Greg Walsh, Duncan Brown

Abutters present: none

Hutwelker called the public hearing to order at 8:35.

DISCUSSION

Carbonneau reviewed the distribution and posting of legal notices for the public hearing (mailed and posted on June 8, 2010 and published in the Keene *Sentinel* on June 12, 2010).

Treat confirmed that ZBA members had read the May 24, 2010 Notice of Swanzey Zoning Board of Adjustment minutes – June 21, 2010

Administrative Decision and the response prepared by the applicant. Treat summarized the objections to the Decision contained in the response. Treat stated that the “indoor auction” use qualifies as both a retail business establishment and a professional business office—two uses permitted in the District. Treat said that, in his opinion, there is no difference between an auction and a supermarket, except for days of operation and number of people. Treat said that the decision creates a dangerous precedent, by limiting permitted uses in any given district to those specifically listed as permitted in the Zoning Ordinance.

Treat said that Carbonneau had suggested applying for a variance. However, Treat said, in his opinion the granting of a variance would require a special exception for hiring a single additional employee. If this were the case, Treat said, the building would no longer be viable. Treat asked the Board to vacate the Administrative Decision, and to agree that an indoor auction is permitted in the Village Business District.

Carbonneau advised Board members of their charge: to determine whether Carbonneau had correctly interpreted the ordinance, and not to debate uses (or the merits of uses) in the district. If the Ordinance does not include a use in the list of permitted uses for a particular district, Carbonneau said, that use is not permitted. Carbonneau said that indoor auctions are not permitted in the district, either by special exception or by right. Upon the granting of a variance, Carbonneau said, that use is considered to be conforming. Conditions of approval may require an applicant to return to the ZBA to gain approval of subsequent changes, or may require Planning Board approval of site plan modifications, Carbonneau said.

In response to Treat's comments that auctions had occurred in the past in the mill as part of the bazaar, Carbonneau stated that auctions were never included in the application nor mentioned in the minutes of the Planning Board when the bazaar was permitted in 2003.

Carbonneau confirmed that individuals could apply to the Board of Selectmen for a special event permit. However, to be approved, the use has to be permitted in the district. Carbonneau said that the Selectmen had granted such a permit to Walsh and, when they discovered the error, had revoked the permit.

Duncan Brown spoke about the historic role of the Mill in the local economy. He said that zoning restrictions and constrictions are in opposition of the “Live Free, or Die” approach. Walsh suggested that an oversight in zoning ordinance amendments in 2008 might have led to lack of consideration of indoor auctions in the Village Business District. (Hutwelker disagreed, speculating that the use had been considered and likely eliminated, likely due to potential traffic issues in the congested residential neighborhood.) Walsh said that a Town Hall staff person had told him he could apply for a yearly permit to conduct the indoor auctions, but he had received no response to his application.

In response to questioning, Walsh stated that he had qualified for a NH auctioneer’s license by passing an exam, and stated that he is bonded.

In discussion, several members agreed that perhaps the zoning should be

amended to permit indoor auctions in the Village Business District. However, members agreed that, at present, indoor auctions are not permitted, and Carbonneau made the proper decision.

Carbonneau, Hutwelker and Thibault encouraged those affiliated with the Homestead Woolen Mill to make recommendations to the Planning Board about appropriate uses in the Village Business District. Thibault recommended that the applicants base their recommendations on the unique qualities of the Mill. Speaking as a member of the Economic Development Advisory Committee, Hutwelker invited the applicants to seek the Committee's support. Hutwelker said that he felt it likely that many uses permitted in the Business District also should be permitted in the Homestead Woolen Mill. Carbonneau said that one of the Planning Board's July discussions of zoning amendments could include the Village Business District, and encouraged those present to convey their recommendations to the Planning Board.

Hutwelker told Walsh that the Homestead Woolen Mill could apply for a variance to allow Walsh to conduct an indoor auction. In order to be on the ZBA's July agenda, a completed application must be submitted on or before July 6th. Hutwelker closed the public hearing at 9:45.

Board members agreed that the application is an appeal from an administrative order, and agreed that the provision in question is the town planner's decision that an indoor auction is not a permitted use in the Village Business District. Board members agreed that the appellant failed to prove their position that the Town Planner erred.

Motion by Beauregard, Sr. to uphold Carbonneau's administrative decision, thereby denying Homestead Woolen Mills' Appeal. Second by Walker. All in favor.

4. Other matters as may be required

Carbonneau reported that the Old Home Day seeks representatives from all Town boards and committees to help staff the many planned activities of the July 17 event.

ADJOURNMENT

Motion by Beauregard, Sr. to adjourn. Second by Mitchell. All in favor. The meeting adjourned at 9:55 p.m.

Respectfully submitted,

Victoria Reck Barlow,
Recording Secretary